IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NOS.5103, 5104, 5105, 5106, 5107, 5108, 5109, 5110, 5111, 5112, 5113, 5114 & 5115 all of 2004

The State of Maharashtra ...Applicant

Versus

Popatlal Samnaji Jain @ Masjid

@ Raju, etc. etc. ...Respondents

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Mr.D.S.Mhaisapurkar, A.P.P. for Applicants in Cri.Appln.Nos.5103/04 to 5106/04.

Mr.A.S.Gadkari, A.P.P. for Applicants in Cri.Appln.Nos.5107/04 to 5110/04.

Mr.K.V.Saste, A.P.P. for Applicants in Cri.Appln. Nos.5111/04 to 5115/04.

Mr.A.P.Mundargi with Mr.Ganesh Gole for Respondents in Cri.Appln.Nos.5111/04, 5112/04 and 5115/04.

Mr.Amin Solkar for Respondents in Cri.Appln.Nos. 5103/04 and 5110/04.

Mr.Javed B.Allana for Respondents in Cri.Appln. Nos.5105/04 and 5108/04.

Mr.Maqsood Khan for Respondents in Cri.Appln.Nos. 5109/04 and 5113/04.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 14, 2004.

P.C.

1. Heard learned A.P.Ps. for Applicant, Mr.Mundargi, Mr.Solkar, Mr.Allana and Mr.Khan for Respondents.

2. All these applications can be disposed of by common order.

3. The short question that arises for my consideration is: whether in the fact situation of the present case, the requirement of filing charge-sheet provided for under Section 167 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), is of ninety days or sixty days? In other words, whether the mandate of Section 167 (2)(a)(i) or 167(2)(a)(ii) of the Code is attracted in the present case? The offence for which the Respondents are being tried, amongst others, is punishable under Section 489-B of the Indian Penal Code (hereinafter referred to as the 'I.P.C.'). The said Section reads thus :

> **"489-B. Using as genuine, forged or counterfeit currency-notes or bank-notes:-** Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine."

4. On plain language of this provision, the punishment provided for commission of offence under this Section is with "imprisonment for life" or with imprisonment of either description for a term which may extend to ten years and shall be liable to fine. The Court below has proceeded on the assumption that since the punishment provided for, is also for imprisonment which may extend to ten years, the mandate of Section 167 (2)(a)(ii) of the Code would be attracted, for which reason, the charge-sheet, having been filed after expiry of sixty days from the date of arrest, the Respondents were entitled for being released on bail. The Court below has referred to the decisions of the Apex Court reported in **AIR 2001 SC 2369 in the case of Rajeev Chaudhary vs. State (N.C.T.) of Delhi** and another decision of the Kerala High Court in

the case of **Sreeragan vs. State of Kerala reported in 2001 Cri.L.J.1944.** The view taken in both these decisions, in my opinion, is inapplicable to the matters on hand.

5. In the present case, the offence is one punishable with "imprisonment for life" or with imprisonment of either description for a term which may extend to ten years and fine. Whereas, in the decisions referred to above, the offences in question were under Section 386 of the Indian Penal Code and Section 8(1) and 8(2) of the Akbari Act respectively. Those offences are punishable with "imprisonment which may extend to ten years". Accordingly, the observations made in the aforesaid decisions are relevant only to those types of cases and not the one with which we are concerned. In other words, if the offence under Section 489-B of the I.P.C. were to be made punishable "only" with "imprisonment which may extend to ten years" then, the Respondents would be justified in contending that rigours of Section 167(2)(a)(ii) of the Code will be attracted and the charge-sheet having been filed after expiry of sixty days, though within

ninety days from the date of arrest, they will be entitled for being released on bail. However, in the present case, going by the plain language of Section 489-B of the I.P.C., the offence is punishable also with "imprisonment for life". If it is so, the rigours of Section 167(2)(a)(i) of the Code will be attracted, in which case, the prosecution is entitled to file the charge-sheet within ninety days from the date of arrest.

6. Viewed in this perspective, the opinion recorded by the Court below cannot be countenanced. Mr.Mundargi for some of the Respondents, however, placed reliance on other decisions to wit- **2002 All.M.R. (Cri.) 1502 Pralhad Vithal Giri & Anr. vs. The State of Maharashtra (Bombay High Court), 1997 Cri.L.J.2974-Om Prakash Gabbar vs. State of Punjab (Punjab & Haryana High Court), 1997 (4) Crimes 464-Babu & Anr. vs. State of Karnataka (Karnataka High Court).** In all these cases, however, the offences were punishable with punishment which may extend upto ten years e.g. Section 306, 325 and 367 and 306 of I.P.C. respectively. For the reasons already recorded

above, those decisions will have no application to the fact situation of the present case.

7. The only case that needs to be referred to as is relied upon by Mr.Mundargi, involving punishment similar to Section 489-B of I.P.C., is reported in **2002 (2) Crimes 473 - Sunil Kumar vs. State of Jharkhand & Ors. (Jharkhand High Court).** In that case, the offence under reference was under Section 304-B of I.P.C., which also provides for punishment not less than seven years, but which may extend to imprisonment for life. Emphasis was placed on this decision to contend that even in such a situation, the Jharkhand High Court has taken the view that provisions of Section 167(2)(a)(ii) of the Code would be attracted and not Section 167 (2)(a)(i) of the Code. With utmost respect, in my opinion, the basis on which the Jharkhand High Court has proceeded to take that view, cannot be accepted. The Jharkhand High Court has taken the view that though the sentence to be imposed in relation to offence under Section 304-B of I.P.C. may not be less than seven years, it may not always go to the maximum limit (which is upto

life), which may be even less than ten years. Taking clue from this observation, Counsel for the Respondents contend that even if Section 489-B of I.P.C. provides for imprisonment for life, that does not mean that in every case, the Court would end up in sentencing the accused with imprisonment for life. In my view, that cannot be the basis to consider whether the case falls under Section 167(2)(a)(i) or 167(2)(a)(ii) of the Code. Whereas, the Court has only to look at the relevant provision of the Code to find out the punishment that can be imposed in relation to the given offence, just as in the present case, the punishment can be for life or also for a term which may extend upto ten years and fine. However, merely because the punishment provided for is also upto ten years or the possibility of the Court imposing lesser sentence, that cannot be the basis to assume that Section 167(2)(a)(ii) of the Code is attracted. If that argument was to be accepted, that would be overlooking the first part of Section 489-B of I.P.C. which provides for punishment with "imprisonment for life".

8. At this stage, all that the Court has to examine is, what is the maximum punishment that can be imposed if the accused is to be convicted for the offence for which, he is being prosecuted. The test cannot be on the assumption that at the end of the trial the Court may not impose the maximum punishment in the given case. Viewed in this perspective, to my mind, the sole basis, on which, the Court below proceeded to pass the order that Section 167(2)(a)(ii) of the Code would apply to the present case, being untenable, the order will necessarily have to be set-aside and the Respondents who have already availed of bail, pursuant to the impugned order, who are present in Court, will have to be directed to be taken into custody forthwith. Indeed, it will be open to the Respondents to apply before the appropriate Court for regular bail, if so advised.

9. Applications allowed on the above terms. The Investigating Officer, who is present in Court is directed to take the concerned Respondents into custody forthwith.

10. At this stage, request is made on behalf of the Respondents for time to surrender. That request is rejected.

11. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.